HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 5867 of 2001 (M/S)
(Old No. 31244/1990)

Raghunath Singh S/o Sh. Chandan Singh

vs ,

State of U.P. through Collector
Tehri Garhwal.

Approved for reporting

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Not Approved for Reporting

Date of decision 15.9.2004.

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 5867 (MS) of 2001
(Old No. 31244/1990)

Raghunath Singh
S/o Sh. ChandanSingh
R/o Village Bhaldigaon Patti
Lalath Paton (Chandrabadni)
Deoprayag District Tehri Garhwal.

.... Petitioner

VS

State of U.P. through Collector
Tehri Garhwal and others.

.... Respondents

Counsel for the petitioner Sh.S.N. Babulkar
Standing Counsel for the respondents.

Dated:15-9-2004

Hon'ble Rajesh Tandon J.

Heard Sh. S.N. Babulkar learned counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the orders dt. 15-10-1990 and 22-2-1989.

Briefly stated according to the case of the petitioner he is a resident of village Bhaldigaon, Patti Lalath Paton (Chandrabadni) Tehsil Deoprayag, District Tehri Garhwal. The petitioner has claimed himself to the owner in possession of a pucca house constructed over plot no. 662 of khasra Khautani No. 52. The area of the construction is 13 muthis land and the house of the petitioner was constructed by his father more than 35 years.

The petitioner has submitted that the aforesaid land over which is pucca house is situated does not belong to the State of U.P. However in the year 1981 a suit under Section 4(1) of the

Public Premises Act was instituted against the petitioner being Suit No. 35 of 1981, which was decided in favour of the petitioner on 16-2-1982. The proceedings under Section 133 CR PC were initiated against the petitioner regarding the same land and the proceedings were terminated on 9-2-2004 in favour of the petitioner. However, the area Patwari for some ulterior motive made a wrong report dt. 19.12.1986 to the collector, Tehri Garhwal alleging that the petitioner has encroached upon the land measuring 1-nali 13 muthis out of plot No. 662 Khasra Khautani No. 52 since 1982-83.

Petitioner has submitted that without application of mind the Collector, Tehri Garhwal has made a complaint to the Prescribed Authority and a suit being Suit No. 90 of 1987 was registered against the petitioner on 1-5-1987. On the basis of the report dt. 19-12-1986, the Prescribed Authority has issued a notice under Section 4(1) of the Public Premises Act to the petitioner.

In Baldeo Raj VS State of Uttar Pradesh and others 1984 All. L.J. 872. The observations are quoted below:-

> *"Learned counsel for the petitioners submitted that, in view of the definition given to the expression "public premises" in the Act, the Prescribed Authority did not have the jurisdiction to direct the eviction of the petitioners in proceedings initiated under this Act. The argument advanced is that upon the averments contained in the notice itself, and as set up by the opposite parties before the authorities below, it would appear that that land is covered under the provisions of the U.P. Zamindari Abolition and Land reform Act and,*

therefore, the recourse, if any, to evict the petitioners could be had under the provision thereof. The expression 'public premises' in Section 2(e) of the Act was amended by the U.P. Act 28 of 1976. The definition as amended excludes "land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures". This is so specified in cl. (i) of the definition appearing in S. 2(e) of the Act. In view of the provision contained in S. 4/6, U.P. Zamindari Abolition and Land Reforms Act, 1950, the right, title or interest of the intermediates came to be vested in the State and the State thereby also acquired right, title or interest over the land held as ' Talab 'or Jheel'. Section 117, U.P. Zamindari Abolition and Land Reforms Act, makes it clear that the superintendence, management and control of such land is vested in the Gaon Sabha. The State Government is empowered also thereunder to transfer this superintendence, management or control from the Gaon Sabha to some other local authority or vice versa. In the extract of Khautani in 1383-85 fasli relief for the respondent, the land in question is shown as recorded 'talab'/Jheel'. The extract of khasra of 1386 Fasli is also referred to in this behalf. The Appellate Authority has, in fact, treated this land as pertaining to 'talab'/'Jheel'. The petitioners are recorded in the Khasra of 1386 fasli under class 4. Reference to the U.P. Land Records Manual shows that this class is meant to denote land held as occupier without title when there is no one already recorded in column 4 of the khasra." Law relating to tenures, namely that contained in the U.P.Zamindari Abolition and Land

Reforms Act makes ample provision for eviction against those who are alleged to have steeped in unauthorised occupation over such land. section 122-B for instance entitled the Gaon Sabha to evict such person on proceeding being initiated as envisaged therein. In order to avoid a conflict of jurisdiction arising between the powers conferred under that Act and the power under the Act, referred to above, the definition given to the expression 'public premises' has deliberately excluded from its purview land vesting in the Gaon Sabha or some other local authority for which provision exists in the law relating to land tenures."

The petitioner has raised the question that the land in question is an agriculture land and the same is not covered under the U.P. Public Premises (Eviction of Unauthorized Occpants).

Learned counsel for the petitioner has relied upon the reported decision in Baldeo Raj Vs. State of U.P. reported in 1984 ALL. L.J. 872, where it has been recorded that definition as amended excludes " the land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures" and as such the court has observed that proceedings under Section 120 B may be initiated by the Gaon Sabha, to evict such persons on proceeding being initiated as envisaged therein. In order to avoid a conflict of jurisdiction arising between the powers conferred under that Act and the power under the Act, referred to above, the definition given to the expression ' Public Premises' has deliberately excluded from its purview land

vesting in the Gaon Sabhas or some other local authority for which provisions exists in law relating to land tenures.

Similar view has been taken by the Uttaranchal High Court in the case of Harish Chandra Vs. State of U.P. reported in 2002 (1) E.L.C. page 508 (H.C.) and it has been observed as under:-

> *"6 In the present case, the disputed land is admittedly used by the petitioners for the purposes of agriculture as is evident from the statement on record that the petitioners are in occupation since 13.80 Fasli. The U.P.Zamindari Abolition and Land Reforms Act itself provides procedure for eviction of unauthorized occupants under section 122-B of the U.P. Zamidari Abolition and Land Reforms Act. The agriculture land is not covered under the U.P. Public Premises (Eviction and Unauthorised Occupants), Act, as is evident from the definition of U.P. Public Premises (Eviction and Unauthorised Occupants) Act, 1972, which reads as under:-*
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> *" 2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the state Government or land appurtenant to such road) or any building or part of a building and includes:-*
>
> *(i) the garden, grounds and out houses, if any, appertaining to such buildings or part of a building;and*

(ii) any fittings or fixtures affixed to or any furniture supplied with such buildings or part of a building for the more beneficial enjoying thereof.

But does not include land which for the time being is held by a tenure holder under any law relating to land tenures."

'2 (e) 'Public Premises, means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of-

(v) any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty-one percent of the paid up share capital held by the State Government ;or.

(vi) any local authority;

(vii) any Corporation(not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government.

(viii) any society registered under the Society Registration Act, 1960, the government body whereof consists, under the rules or regulations of the society, wholly or public officers, or nominees of the State Government or both;

and includes:-

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the

entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures.

(ii) Any premises acquired under the land acquisition act 1984, with the consent of the State Government for a Company (as defined in that Act) and held by that company under an agreement excuted under Section 41 of that Act providing for re-entry by the State Government in certain conditions."

In view of the aforesaid proposition of law, the matter is sent back to the Prescribed Authority for deciding the case afresh on the basis of the material evidence on record. The petitioner as well as respondents both are permitted to lead additional evidence in order to show that the land is covered under Gaon Sabha or not.

The Prescribed authority shall also consider as to whether the petitioner is entitled for regularization in pursuance of the Notification to that effect.

Accordingly, the writ petition is allowed. The matter is sent back to the Prescribed Authority for deciding the matter afresh in the light of the observations made above.

Dated:- 15-9-2004 (RAJESH TANDON J.)

M.K.